

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 1149 of 1996

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHANTILAL MAGANLAL PATEL  
VERSUS  
NAGAR PRATHMIK SHIKSHAN SAMITI

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Appearance:

MR RN SHAH for the Petitioner  
MR SN SHELAT, ADDL. ADV. GENERAL for Respondents  
No.1 and 2  
MS KN VALIKARIMWALA for Respondent No.3  
MR SM MAZGAONKAR for Respondent No.4

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CORAM : MR JUSTICE S.K. KESHOTE

Date of decision: 23/07/99

C.A.V. JUDGMENT

1. Challenge has been made by the petitioner, an officer of the Ahmedabad Municipal Corporation, to the order of the Corporation under which the respondent No.4 was appointed by promotion as Administrative Officer, Nagar Prathmik Sikshan Samiti, Ahmedabad Municipal Corporation.

2. Challenge has been made on the ground that the Corporation had decided to fill in this post by making open selection, and after inviting the applications the selection committee has prepared the select list and the name of Shri Kaushik Mehta who was at Sr. No.1 in merit list was sent for approval of the State Government but that name was not approved, and as such, the respondent-Corporation should have sent the name of the petitioner for his approval of appointment on the said post to the State Government who stood at Sr. No.2 in the merit list rather than to fill up that post by promotion. Second contention has been raised that the promotion of the respondent No.4 on the post aforesaid is malafide or a clear case of official malafide as he could not stand to merits in comparative to the petitioner and to favour him this promotion has been given.

3. Shri S.N. Shelat, Addl. Adv. General appearing for the Corporation and Shri S.M. Mazgaonkar, counsel who is appearing for respondent No.4, contended that the petitioner has no case. The selection committee has not prepared any waiting list and petitioner's claim is wholly baseless. It is next contended that it is always open to the Corporation to resort to the method of recruitment by promotion and precisely what it has been done to which no exception can be taken.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

5. It is not in dispute that the petitioner is junior to respondent No.4 in the Corporation services.

6. The appointment by direct selection or by promotion is not a fundamental right. In both of the methods of recruitment, the candidates have only a right of consideration for appointment.

7. The employer has all the right to decide by which mode of recruitment i.e. by direction selection or by promotion, a post has to be filled in.

8. It is true that in this case the Corporation has decided to fill in, at one point of time, the post in question by direct recruitment for which the applications were invited and there is no dispute that the petitioner, respondent No.4 and Shri Kaushik Mehta and many more had applied for the post.

9. The proceedings of the selection committee have been produced for the perusal of the Court. I do not consider it to be necessary nor it is very relevant and material for decision of this special civil application whether any waiting list has been prepared or not. However, from the proceedings of the selection committee, it clearly reflects that the names of petitioner, Shri Kaushik Mehta and respondent No.4 are there in the order of merits i.e. Shri Kaushik Mehta at No.1, petitioner at No.2 and respondent NO.4 at No.3. As what Mr. Shelat is contending that only the name of Shri Kaushik Mehta was recommended by the selection committee is also not very material.

10. Learned counsel for the parties are not at variance that the State Government has declined to approve the selection of Shri Kaushik Mehta for his appointment on the post in question.

11. It is no more res integra that empanelment does not confer any right or an indefeasible right on the candidate included therein for his appointment on the post. This settled position has been reiterated by their Lordships of the Hon'ble Supreme Court in the case of Rani Laxmibai Kshetriya Gramin Bank vs. Chandbihari Kapur reported in 1998 (7) SCC 469.

12. The claim of the petitioner for appointment only on the basis of what the learned counsel for the petitioner is contending that his name is there at Sr. No.2 in the select list is not an indefeasible right. The respondent-Corporation has all the right not to act upon that select list and this court will not interfere in the matter where it is satisfied that the Corporation has good and valid reasons not to act upon the select list. Learned counsel for the petitioner has failed to show any authority in support of his contention that when the name of the candidate who was placed at Sr. No.1 was not approved by the State Government for his appointment on the post in question it is legal obligation and the duty of the Corporation to recommend the name of the petitioner, who is at Sr. No.2 in the select list, for approval of the State Government. The

matter would have been different where the select list would not have been acted upon i.e the candidate who stood at Sr. No.1 thereof also could not have been appointed but it is not the case here. The select list is acted upon by the Corporation. However, it is different matter that the State Government has not approved the same. Though I am not deciding this issue finally, I have my own reservation whether in case where the candidate who stands at Sr. No.2 in the select list or the waiting list on non-approval of selection of the candidate at Sr. No.1 in the select list could have prayed for a writ of mandamus and this court could have issued the mandamus in such matter. It is a case where the decision taken by the Corporation not to recommend the name of the petitioner for approval of his selection for appointment cannot be said to be arbitrary which calls for the interference of this Court. It is settled principle of law, as stated earlier, that the appointing authority has all the right not to act upon the select list for good and valid reasons. Here the respondent NO.4 who is senior to the petitioner in the Corporation services and in case where on non approval of the name of the candidate who stood at Sr. No.1 in the select list, the Corporation has not committed any error to give the appointment to the senior person by promotion. Both the petitioner and the respondent No.4 cannot be said to be in the main select list or at Sr. No.1. In the facts of this case, the Corporation has acted reasonably, fairly and in the larger interest of the services of the officers and as well as to avoid the frustration in the services amongst the two selectees in the open selection, decided not to give appointment to any of them by selection but to resort to the mode of recruitment by promotion and to give the promotion to senior person. This contention of the learned counsel for the petitioner in the facts of this case is difficult to accept.

13. Though the learned counsel for the petitioner has challenged this promotion of respondent No.4 on the ground of malafides, except to simply utter a word, he is unable to make any case of malafides in this case.

14. In the case of Rani Laxmibai Kshetriya Gramin Bank vs. Chandbihari Kapur (supra) there was somewhat similar point for consideration and the ratio of that judgment also can be applied to this case in the facts of this case.

15. In the result, this special civil application fails and the same is dismissed. Rule discharged.

Interim relief, if any, granted by this Court stand  
vacated. No order as to costs.

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